

**GENERAL TERMS AND CONDITIONS OF  
NET METERING CREDIT PURCHASE AND SALE AGREEMENT**

*These General Terms and Conditions (“General Conditions”) are dated as of the Effective Date (see Schedule 1 of Net Metering Credit Purchase and Sale Agreement) and are witnessed and acknowledged by SunEdison Origination1, LLC (“SunEdison” or “Provider”) and Town of Amherst, Massachusetts, a Massachusetts municipal corporation (“Purchaser”), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into Net Metering Credit Purchase and Sale Agreement that may be entered into between SunEdison and Purchaser or between their respective affiliates. Except to the extent SunEdison or Purchaser becomes a party to a Net Metering Credit Purchase and Sale Agreement that incorporates these General Conditions, these General Conditions shall have no binding effect upon SunEdison or Purchaser.*

**1. DEFINITIONS.**

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means the signed Net Metering Credit Purchase and Sale Agreement, including the General Conditions and all exhibits and attachments thereto.

“Allocated Percentage” means the percentage of the Net Metered Production to be allocated to Purchaser, as set forth in Schedule 2 of the Net Metering Credit Purchase and Sale Agreement.

“Annual kWh Cap” means the maximum amount of kWhs of the Net Metered Production for which Purchaser shall be required to make payment in accordance with Section 5.1, as set forth in Schedule 2 of the Net Metering Credit Purchase and Sale Agreement.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, standard, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including Environmental Law, and including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or to be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un-stayed and in effect for a period of sixty (60) days.

“Billing Cycle” means the monthly billing cycle established by the Local Electric Utility.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required by Applicable Law to be closed for business.

“Class III Net Metering Facility” has the meaning set forth in 220 CMR 18.

“Commercial Operation” and “Commercial Operation Date” have the meaning set forth in Section 3.3(b).

“Construction Start Date” means the date on which Provider has (i) obtained all Governmental Approvals required for the installation and interconnection (to the Local Electric Utility) of the System at the Premises, (ii) commenced actual, substantial construction and earth-moving activities, and (iii) delivered all or substantially all the System’s solar photovoltaic panels to the Premises. For avoidance of doubt, the conduct of tests and inspections at the Premises shall not constitute commencement of substantial and actual construction and earth-moving activities.

“Delay Liquidated Damages” means the daily payment of \$0.250/day/kW if the Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Provider under the circumstances described in Section 2.2 or Section 11.2.

“Effective Date” has the meaning set forth in the Net Metering Credit Purchase and Sale Agreement.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products. They shall not mean the Net Metered Production.

“Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or release of or exposure to Hazardous Materials.

“Estimated Annual Net Metered Production” has the meaning set forth in Section 5.2.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under coercion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

“Financing Party” means, as applicable (i) any Person (or its agent) from or to whom Provider (or an Affiliate of Provider) leases the System for the purpose and as a method of financing the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System. It shall not mean or include Provider’s trade creditors.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means these General Terms and Conditions of Net Metering Credit Purchase and Sale Agreement.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government and the Local Electric Utility. It shall include the Mass. Department of Environmental Protection, and the Town of Amherst.

“Guaranteed Commercial Operation Date” has the meaning set forth in Schedule 1 of the Net Metering Credit Purchase and Sale Agreement.

“Guaranteed Construction Start Date” has the meaning set forth in the Schedule 1 of the Net Metering Credit Purchase and Sale Agreement.

“Hazardous Materials” means petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

“Host” or “Host Customer” means, for the Utility Meter, Purchaser, and shall have the meaning given this term in the Net Metering Rules.

“Initial Term” has the meaning set forth in Section 2.1 for the time period specified in the Net Metering Credit Purchase and Sale Agreement.

“Installation Work” means the design, engineering, construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises, including, as applicable and without limitation, and subject to and to the extent permitted by the terms of this Agreement, Provider’s efforts to evaluate, conduct or perform field inspections, preconstruction work, non-invasive soil and water testing, environmental audits, engineering and boundary surveys, topographical, structural and geo-technical tests, and such other tests and inspections of the Premises which Provider may deem necessary or advisable.

“Interconnection Obligations” has the meaning set forth in Section 7.1(g).

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh set forth in Schedule 2 of the Net Metering Credit Purchase and Sale Agreement.

“Liens” has the meaning set forth in Section 7.1(e).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses arising therefrom, including such fees, costs and expenses incurred in defending or prosecuting in any forum any of the foregoing, or in asserting or enforcing in any forum any indemnity obligation).

“Net Metered Production” means the amount of energy delivered to the Local Electric Utility generated by the System, as measured by the Utility Meter, for which Purchaser receives Net Metering Credits from the Local Electric Utility, as reflected on the invoices received by Purchaser from the Local Electric Utility for the accounts

of Purchaser listed on the Schedule Z filed with the Local Electric Utility for the System.

“Net Metering” means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar photovoltaic system and delivered to the Local Electric Utility, as set forth in the Net Metering Rules.

“Net Metering Credit” shall mean the monetary value of the excess electricity generated by a System, as set forth in the Net Metering Rules.

“Net Metering Credit Purchase and Sale Agreement” means the agreement by that name the form of which is attached to these General Conditions.

“Net Metering Facility of a Municipality or Other Governmental Entity” has the meaning set forth in 220 CMR 18.

“Net Metering Rules” means, collectively, and as amended from time to time, the Massachusetts net metering statute, M.G.L. c.164, s.138-140, the Massachusetts net metering regulations, 220 CMR 18.00, orders issued by the Massachusetts Department of Public Utilities, and the associated net metering tariff of the Local Electric Utility.

“Operating Year” means each consecutive twelve month period commencing on the Commercial Operation Date and each anniversary thereof.

“Option Price” has the meaning set forth in Section 2.3.

“Party” or “Parties” has the meaning set forth in the preamble to the Net Metering Credit Purchase and Sale Agreement.

“Payment” has the meaning set forth in Section 6.1.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means up to 14.5 acres of the premises owned by Purchaser and licensed to Provider in accordance with the provisions set forth and as described in Exhibit B.

“Provider” has the meaning set forth in the preamble of the General Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Purchase Date” means the first August 1 (or if August 1 is not a Business Day, such first Business Day that occurs after such August 1) after the tenth (10<sup>th</sup>), fifteenth (15<sup>th</sup>) and twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Purchase Option” has the meaning set forth in Section 2.3.

“Purchaser Indemnified Parties” has the meaning set forth in Section 16.1.

“Removal Bond” means (i) a surety bond or an unconditional, irrevocable guaranty by Sun Edison LLC of the decommissioning and removal obligations of the System and restoration of the Premises to its original condition, in form and substance satisfactory to Purchaser up to the eighteenth anniversary of the Commercial Operation Date, and (ii) on such anniversary to the end of the Term a surety bond in the amount of \$.10/Wdc (or, if greater, 150 percent of a reasonable estimate to remove the System from the Premises without deduction for assumed salvage value, and to restore the Premises to their original condition) for the decommissioning and removal of the System and the restoration of the Premises to its original condition in accordance with Exhibit B. The surety bond shall be issued by a surety listed on the U.S. Department of Treasury Circular 570, be reasonably satisfactory to Purchaser, be licensed to do business in Massachusetts, and be rated as A.M. Best A+ XII or better.

“Renewal Term” has the meaning set forth in Section 2.1.

“Reserved Property” has the meaning set forth in Exhibit B.

“Security Interest” has the meaning set forth in Section 8.2.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 of the Net Metering Credit Purchase and Sale Agreement and all other solar or renewable energy subsidies and incentives. They shall not include the Net Metered Production.

“Solar Insolation” or “Insolation” means the amount of solar kWh per square meter falling on a particular location, as specified by Provider.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus one percent (1%) or (b) the maximum rate allowed by Applicable Law.

“System” or “Solar System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 of the Net Metering Credit Purchase and Sale Agreement.

“System Operations” means the Provider’s operation, maintenance and repair of the System performed in accordance the requirements herein.

“Term” has the meaning set forth in Section 2.1.

“Tracking Trigger” has the meaning set forth in Schedule 2 of the Net Metering Credit Purchase and Sale Agreement.

“Utility Meter” means the meter installed by the Local Electric Utility for the System, and which is to be used to quantify the Net Metered Production.

1.2 Interpretation. The captions or headings in the Agreement, including these General Conditions, are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include,” “includes,” and “including,” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof,” “herein,” and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement (the “Term”) shall commence on the Effective Date and shall continue for the number of years from the Commercial Operations Date specified in Schedule 7 of the Net Metering Credit Purchase and Sale Agreement for the Initial Term, unless and until terminated earlier pursuant to the provisions of the Agreement or Applicable Law. After the Initial Term, the Agreement may be renewed for an additional five (5) year term (a “Renewal Term”), as follows. At least one hundred and eighty (180) days, but

no more than three hundred and sixty five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term. Purchaser shall have sixty (60) days to agree in writing to continuation of the Agreement for the Renewal Term. Absent such written agreement by Purchaser to the Renewal Term, this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the “Term.” During any Renewal Term, either Party may, subject to Section 2.3, terminate the Agreement upon one hundred and eighty (180) days’ prior written notice to the other Party.

2.2 Early Termination. In addition to other rights of Purchaser to terminate this Agreement:

(a) Purchaser may terminate the Agreement after the Commercial Operations Date but prior to the Expiration Date without cause and for any reason (or no reason) upon sixty (60) days’ prior written notice. If Purchaser so terminates the Agreement prior to the Expiration Date of the Initial Term without cause, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 3, of the Net Metering Credit Purchase and Sale Agreement, and Provider shall, within 90 days following termination, cause the System to be disconnected and removed from the Premises, and shall restore the Premises to its original condition as set forth in Exhibit B. Upon Purchaser’s payment to Provider of the Early Termination Fee, the Agreement shall terminate automatically.

(b) Notwithstanding the foregoing, (i) Purchaser may terminate this Agreement with no liability if Provider fails to achieve the Construction Start Date by the Guaranteed Construction Start Date; and (ii) if Provider fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, Provider shall pay to Purchaser (as its sole remedy for such failure of Provider to achieve such date, and subject to a liability cap of 180 days of such accrued damages) the Delay Liquidated Damages. Provider shall make any Delay Liquidated Damages payments on the first day of each month. If Provider fails to achieve the Commercial Operation Date by the date that is 180 days after the Guaranteed Commercial Operation Date, Purchaser may nonetheless terminate this Agreement with no liability. Provider shall, within 90 days following any such termination, remove the System from the Premises and restore the Premises to their original condition as set forth in Exhibit B.

(c) Notwithstanding the foregoing, Purchaser may terminate the Agreement with no liability if Provider fails, as of the Construction Start Date, to obtain,

from the Massachusetts System of Assurance of Net Metering Eligibility, a cap allocation for the Project under the Local Electric Utility’s public cap, as such cap exists under G.L. c. 164, § 139(f), as of the Effective Date, unless (x) the Massachusetts General Court increases such cap before such date without making or requiring other changes in law or regulations that result or will result in a change in the components, value, or method of calculating the value of Net Metering Credits in a manner adverse to Purchaser, and (y) Provider obtains a cap allocation within such public cap before the Guaranteed Commercial Operations Date and maintains said allocation without interruption through to the Commercial Operations Date. Provider shall provide written notice to Purchaser before the anticipated Construction Start Date and, if applicable as set forth in this provision, the Guaranteed Commercial Operations Date stating whether it has obtained a cap allocation under the public cap as set forth in this provision.

2.3 Purchase Option. On the Purchase Date, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System (the “Purchase Option”) for a purchase price (the “Option Price”) equal to the greater of (x) the Fair Market Value of the System as of the Purchase Date; or (y) the applicable “Base Line Price” set forth in Schedule 3 of the Net Metering Credit Purchase and Sale Agreement. To exercise the Purchase Option, Purchaser shall, not less than one hundred and eighty (180) days prior to the Purchase Date, provide written notice to Provider of Purchaser’s intent to exercise the Purchase Option. Within thirty (30) days of receipt of Purchaser’s notice, Provider shall specify the Option Price and provide all calculations and assumptions supporting said Option Price to Purchaser. Purchaser shall then have a period of sixty (60) days after notification to confirm or retract, in writing, its decision to exercise the Purchase Option, or to dispute the determination of the Fair Market Value of the System. In the event Purchaser confirms its exercise of the Purchase Option in writing to Provider (whether following receipt of Provider’s calculation of the Option Price, or after any determination of the Fair Market Value determined pursuant to Section 2.4 in the event Purchaser disputes Provider’s calculation of the Option Price), the Parties shall promptly execute all documents necessary to cause title to the System to pass to Purchaser on the Purchase Date, free and clear of any Liens, and Purchaser shall, subject to appropriation by Amherst Town Meeting, pay the Option Price to Provider on the Purchase Date, such payment to be made in accordance with any previous written instructions delivered to Purchaser by Provider or Provider’s Financing Party, as applicable, for payments under the Agreement.

2.4 Determination of Fair Market Value. If Purchaser disputes the stated Fair Market Value under

Section 2.3, then the Parties shall mutually select an independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall have expertise and experience in valuing photovoltaic systems, including resale markets for such systems and related environmental attributes, and shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. Such determination shall be the Option Price, absent fraud or manifest error. Purchaser shall either confirm or retract the exercise of the Purchase Option within thirty (30) days of receipt of such determination. The costs of the appraisal(s) shall be borne by Purchaser if such Fair Market Value results in a value equal or up to 10 percent greater than the value provided by Provider pursuant to Section 2.3 and Purchaser retracts the exercise of the Purchase Option; the costs of the appraisal(s) shall be borne by Provider if such Fair Market Value results in a value less than the value provided by Provider pursuant to Section 2.3.

2.5 Not Used.

2.6 Provider Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur through no fault of Provider prior to the Construction Start Date, as reasonably demonstrated by Provider to Purchaser, Provider may (at its sole, reasonable discretion), upon payment of \$5,000 to Purchaser as liquidated damages, terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, including but not limited to Provider's obligation to remove all components of the System and restore the Premises to their original condition in accordance with Exhibit B.

(a) There exist site conditions (including environmental conditions) at the premises that were not and could not have reasonably been known as of the Effective Date and that will directly and materially increase the cost of Installation Work or materially and adversely affect the electricity production from the System as designed.

(b) There has been a material adverse change in the rights of Purchaser to lease the Premises to Provider for the construction and operation of the System on the Premises.

(c) Provider has received, before the Guaranteed Construction Start Date, written evidence from the Local Electric Utility clearly indicating that interconnection services will not be available for the System at a cost less than \$0.25 per Wdc.

(d) Provider is unable to obtain financing for installation of the System on customary terms and conditions that are reasonably satisfactory to Provider.

2.7 Purchaser Conditions of the Agreement Prior to Installation. In addition to other rights of termination under this Agreement, in the event that any of the following events or circumstances occur prior to the Construction Start Date, Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, and except that Provider shall be required to remove any and all components of the System located at the Premises, and restore the Premises to their original condition in accordance with Exhibit B:

(a) There is a change in Applicable Law, including the regulatory environment, incentive program or federal or state tax code, that could reasonably be expected to adversely affect the economics of this Agreement for Purchaser, including changes in 220 CMR 18 concerning the components, value, or method of calculating the value of Net Metering Credits.

(b) There has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises.

(c) Purchaser has not received written assurance from Provider reasonably satisfactory to it that (x) interconnection services will be available with respect to electricity generated by the System and (y) the System will be eligible for Net Metering as a Net Metering Facility of a Municipality or Other Governmental Entity.

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed with reasonable care and diligence, in a workmanlike manner, in accordance with Schedule 1 of the Net Metering Credit Purchase and Sale Agreement, Applicable Law, prudent solar PV industry practices, applicable manufacturer warranties, and the provisions of this Agreement, and in a manner such that the System shall, as of the Commercial Operation Date, qualify for the Local Electric Utility's "G-0 rate (or if such rate is no longer available to any customer, its successor rate). At least 21 days before the Construction Start Date, Provider shall furnish to Purchaser all construction plans and specifications. Purchaser shall, in addition to any local regulatory reviews or approvals, have the right to review and approve all construction plans and designs, including engineering evaluations of the impact of the System,

provided that such approval shall not be unreasonably withheld, conditioned or delayed, and shall be provided within 30 days of receipt of said plans and specifications, and provided further that any approval or lack thereof shall not relieve Provider of any of its obligations under this Agreement or act to waive any rights or remedies of Purchaser under the Agreement. Subject to Applicable Law, Provider shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 5:00 p.m. in a manner that causes no unreasonable inconvenience to or interference with the use of the Premises. This provision may be altered by an amendment signed by both Parties hereto.

3.2 Approvals; Permits. Purchaser shall reasonably cooperate with Provider in Provider's efforts in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility, any Governmental Authority, and any waivers, approvals or releases required pursuant to any applicable CCR. To the extent such cooperation requires Purchaser to incur legal and/or professional consulting fees, Provider shall be responsible to promptly reimburse Purchaser for all fees reasonably incurred by Purchaser.

3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards, practices and criteria reasonably accepted or followed by photovoltaic solar system integrators and installers in the United States. Provider shall inform Purchaser when the testing is scheduled to take place and will allow for Purchaser or Purchaser representative to observe testing.

(b) Commercial Operations of the System shall be deemed to have occurred only when (i) the results of such testing indicate that the System is capable of generating electricity at full or substantially full capacity, using such instruments and meters as have been installed for such purposes, and (ii) the System has been approved for interconnected operation by the Local Electric Utility and has been interconnected to the Local Electric Utility's distribution system, and (iii) the System has been qualified as a Net Metering Facility of a Municipality or Other Governmental Entity. Within fourteen (14) days of the first day of Commercial Operation of the System, Provider shall send a written notice and supporting documentation to Purchaser certifying the date on which Commercial Operation was achieved, and such date shall be the Commercial Operation Date.

4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party, and shall be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense, with reasonable care and diligence, in a workmanlike manner, and in accordance with Applicable Law, prudent solar PV industry practices, and the provisions of this Agreement.

4.2 Metering. Provider shall install and maintain or cause to be installed and maintained the Utility Meter, which shall be used to measure and quantify the Net Metered Production and corresponding Net Metering Credits. Provider may install other meters for its own purposes.

(a) Installation. Provider shall maintain and test the Utility Meter or cause said meter to be maintained and tested in accordance with but not limited to Applicable Law and the requirements of the Local Electric Utility. Provider shall ensure that the Utility Meter is installed and calibrated correctly to manufacturer and Local Electric Utility specifications during commissioning of the System.

(b) Measurements. Readings of the Utility Meter shall be conclusive as to the amount of Net Metered Production delivered to Local Electric Utility; *provided*, that if the Utility Meter is out of service, is discovered to be inaccurate pursuant to Section 4.2(c), or registers inaccurately, measurement of electricity shall be determined by the Local Electric Utility.

(c) Testing and Correction. The following shall be subject to the requirements, if any, of the Local Electric Utility:

i. Purchaser's Right to Conduct Tests. Subject to the requirements, if any, of the Local Electric Utility, each Party shall have the right to witness each test conducted by or under the supervision of Provider to verify the accuracy of the measurements and recordings of the Utility Meter. Provider shall provide at least twenty (20) days prior written notice to Purchaser of the date upon which any such test is to occur. Provider shall prepare a written report setting forth the results of each such test, and shall provide Purchaser with copies of such written report and the underlying supporting documentation not later than thirty (30) days after completion of such test. Provider shall bear the cost of the annual testing of the meter and the preparation of the meter test reports.

ii. Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the meter:

(A) If either Party disputes the accuracy or condition of the meter, such Party shall so advise the other Party in writing.

(B) Provider shall, within thirty (30) days after receiving such notice from Purchaser, or Purchaser shall, within such time after having received such notice from Provider, advise the other Party in writing as to its position concerning the accuracy of such meter and state reasons for taking such position.

(C) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the meter to be tested by an agreed upon and disinterested third party.

(D) If the meter is found to be inaccurate by not more than two percent (2%), any previous recordings of the meter shall be deemed accurate, and the Party disputing the accuracy or condition of the meter under Section 4.2(c)(ii)(A) shall bear the cost of inspection and testing of the meter.

(E) If the meter is found to be inaccurate by more than 2% or if such meter is for any reason out of service or fails to register, then (1) Provider shall promptly cause any meter found to be inaccurate to be: (x) replaced or (y) adjusted to correct, to the extent practicable, such inaccuracy, (2) the Parties shall estimate the correct amounts of electricity delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 4.2(b), and (c) Provider shall bear the cost of inspection and testing of the meter and reimburse or credit Purchaser if Purchaser was the disputing Party under 4.2(c)(ii)(A). If as a result of such adjustment the quantity of electricity for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Provider shall reimburse or credit Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the meter. If as a result of such adjustment the quantity of electricity for any period is increased (such quantity, the "Electricity Surplus Quantity"), Purchaser shall pay for the Electricity Surplus Quantity at the price applicable during the applicable period.

(d) No Duty on Purchaser. Notwithstanding the foregoing, the Parties acknowledge and agree that the Purchaser is under no responsibility or duty to ascertain, to inspect or to otherwise determine whether the Utility Meter or any other part of the System is out of service, is inaccurate or registers inaccurate readings, is malfunctioning or is otherwise defective, and that, at all times, such responsibility or duty shall remain with the Provider.

## 5. DELIVERY OF NET METERED PRODUCTION.

5.1 Purchase Requirement. Purchaser agrees, subject to the other terms of this Agreement, to make payments equal to the Allocated Percentage multiplied by Net Metered Production generated by the System during each relevant month of the Term; provided however, during any year, the Purchaser shall not be required to make payments for more than the Annual kWh Cap, as set forth in Schedule 3 of the Net Metering Credit Purchase and Sale Agreement.

Provider represents and warrants that the energy corresponding to the Net Metered Production shall be delivered to the Utility Meter free and clear of any claims, liens, security interests, or encumbrances of any kind. Notwithstanding anything to the contrary in the Agreement, risk of Loss of the Net Metered Production to be purchased by Purchaser hereunder shall pass to Purchaser only when the Net Metering Credits (of the Net Metered Production) are credited to Purchaser's Schedule Z accounts by the Local Electric Utility, and risk of loss for all Net Metering Production in excess of the Annual kWh Cap shall always remain with Provider. For the purposes of this paragraph of Section 5.1, "Risk of Loss" as to the Net Metered Production up to the Annual kWh Cap shall mean the risk that all of any portion of such Net Metered Production does not, for reasons not due to Purchaser's negligence or breach of this Agreement, result in a credit associated with such Net Metered Production appearing on the qualified accounts identified by Purchaser in its Schedule Z allocation schedule. In the event that such credit does not appear on such accounts, Provider shall be responsible for communicating with the Local Electric Utility to resolve the discrepancy, provided that Purchaser shall not be required to pay for any Net Metering Credits that have not been allocated to its Schedule Z accounts by the Local Electric Utility, and Provider shall promptly reimburse Purchaser for any amounts paid for Net Metering Credits that have not been so allocated. Provider shall promptly review each Schedule Z before it is filed with the Local Electric Utility, and shall notify Purchaser in writing, before the Schedule Z is filed, if it suspects that any of the accounts listed on the Schedule Z are not qualified or eligible to receive Net Metering Credits.

5.2 Estimated Annual Net Metered Production. The total annual estimate of Net Metered Production for any given year as determined pursuant to this Section shall be the "Estimated Annual Net Metered Production." The Estimated Annual Net Metered Production for each year of the Initial Term is set forth in Schedule 4 of the Net Metering Credit Purchase and Sale Agreement. For the purpose of clarification, the estimated amount of Net Metered Production to be allocated to



Purchaser is the Allocated Percentage of the Estimated Annual Net Metered Production up to the Annual kWh Cap.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase of the Net Metered Production does not include Environmental Attributes or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any reasonable document or agreement reasonably necessary to fulfill the intent of this Section 5.3, provided that Developer shall reimburse the reasonable attorneys' fees, if any, incurred by Purchaser in the review of any such document or agreement. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that the Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser shall, through its Town Administrator or his designee, deliver a memorandum to all Town department heads instructing that they not publish, in the name of the Town of Amherst, any press release stating that Purchaser is purchasing solar or renewable energy from the System. Notwithstanding the foregoing, any good faith failure of Purchaser to comply with the preceding sentence shall not constitute a default of this Agreement.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. If Purchaser is the fee owner of the Premises, Purchaser will reasonably cooperate with the filing by Provider of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises, provided that Developer shall reimburse the reasonable attorneys' fees, if any, incurred by Purchaser in the review of any such disclaimer.

5.5 Net Metering. The Parties will reasonably cooperate in good faith to meet all Net Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements (e.g., Schedule Z). The Parties agree that (a) Provider shall transmit the Net Metered Production into the Local Electric Utility distribution system, and (b) Purchaser (or its designee) shall be entitled to any and all Net Metering Credits issued

by the Local Electric Utility resulting from such transmission and corresponding to the Allocated Percentage, subject to the terms of the Agreement.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Subject to the other terms of this Agreement, Purchaser shall pay to Provider a monthly payment (the "Payment") with respect to each monthly Billing Cycle of the Term equal to the product of (x) the Net Metered Production for the System for the relevant month multiplied by (y) the kWh Rate, multiplied by (z) the Allocated Percentage, provided, however, that during any year, the Purchaser shall not be required to make payments for more than the Annual kWh Cap.

6.2 Invoice. Purchaser shall provide Provider with a copy of each monthly bill from the Local Electric Utility in Purchaser's capacity as Host Customer of the System within five (5) business days of receipt. Purchaser may fulfill such obligation by providing read-only access to Purchaser's account with the Local Electric Utility. Following Provider's receipt of such monthly bill, Provider shall invoice Purchaser (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Payment of the Net Metered Production corresponding to the Net Metering Credits reflected in such bills for the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement. Notwithstanding anything to the contrary in this Agreement, Provider, with the reasonable cooperation of Purchaser, shall be responsible for resolving with the Local Electric Utility any perceived discrepancies regarding the Net Metering Credits allocated to Purchaser by the Local Electric Utility for the Net Metered Production.

6.3 Time of Payment. Subject to the terms of this Agreement, Purchaser shall pay all undisputed amounts due hereunder within the time specified in the Net Metering Credit Purchase and Sale Agreement.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer or check in immediately available funds to the account designated by Provider from time to time. All undisputed payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.5 below, all payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges and, except in the event of a Provider Default, not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid; and if an amount paid by Purchaser and later disputed by Purchaser is subsequently deemed to not have been due, interest shall accrue at the Stated Rate on the amount to be refunded or credited to Purchaser from the date the amount was paid to the date such refund or credit was provided.

6.6. Tracking Trigger.

(a) If, for any invoice period, the Net Metering Credit value (on a per kWh basis, as may, if applicable, be determined pursuant to Section 6.7.) drops below the Tracking Trigger, then with respect to the period to which such invoice relates, Purchaser shall accrue a billing credit equal to the Net Metered Production for the relevant month, multiplied by the positive difference between the Tracking Trigger and the Net Metering Credit value (such credit, the “Purchaser Credit”). Within sixty (60) days after the end of each calendar year (and from time to time as Purchaser may reasonably request), Provider shall provide a calculation of the net aggregate Purchaser Credit or Provider Credit (as the case may be). The Purchaser Credit shall escalate at a rate of 2 percent each calendar year.

(b) If, at the end of the Term (and after application of any offset in the manner described in clause (c) below), there shall be a remaining Purchaser Credit, the Term of the Agreement shall, subject to Applicable Law, be extended for successive periods of one month, until such time as there is no longer a Purchaser Credit. During any such extension of the Term, (i) the Kwh Rate shall be 100% of the value of the Net Metering Credit (on a per kWh basis), and (ii) the Purchaser Credit shall be applied to satisfy 80% of the invoice amount, with the remaining to be paid by Purchaser. In no event shall the Term be extended for more than an additional 24 months pursuant this clause.

(c) If, for any invoice period, the Net Metering Credit value (on a per kWh basis) is greater than the Tracking Trigger, then with respect to the period to which such invoice relates, Provider shall accrue a credit equal to the Net Metered Production for the relevant month, multiplied by the positive difference between the Net Metering Credit value and the Tracking Trigger (such

credit, the “Provider Credit”). Any Provider Credit may be applied by Provider only to reduce any aggregate Purchaser Credit that may have accrued. Any unutilized Provider Credit shall be rolled forward and be available to reduce any future Purchaser Credit during the Term. The Provider Credit shall escalate at a rate of 2 percent each calendar year.

6.7 Wholesale Sale Option. In the event that the aggregate Purchaser Credit increases for six successive months, then at the written request by Purchaser, Provider shall promptly take all steps reasonably necessary to sell electricity generated by the System into the wholesale power market. Purchaser shall cooperate as reasonably necessary to accomplish Provider’s sale of electricity into the wholesale market. No later than ninety (90) days after such written request, Provider shall (if deemed feasible by the Parties and permitted by Applicable Law) commence the sale of such electricity into the wholesale market, and Provider shall pass along the proceeds of such sale to Purchaser, net of any incremental costs reasonably incurred by Provider in order to sell the electricity into the wholesale power market. During such period where Provider is selling power into the wholesale market pursuant to this Section 6.7, the proceeds received by Purchaser, divided by the number of kWh sold during the relevant period shall be considered the Net Metering Credit value for the purposes of Section 6.6 of this Agreement. Notwithstanding the foregoing in this Section 6.7, Provider shall not be required to sell electricity generated by the System into the wholesale market during periods where the clearing price for the wholesale sales would be less than the value of the Net Metering Credits that would be generated absent such sales into the wholesale market. For the avoidance of doubt, nothing in Section 6.6 or Section 6.7 shall modify Purchaser’s obligations pursuant to Section 6.1.

6.8 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of any Local Electric Utility billing adjustment, the quantity of Net Metered Production is decreased (the “Electricity Deficiency Quantity”) and the Local Electric Utility reduces the amount of Net Metering Credits allocated to Purchaser for such period, Provider shall promptly reimburse Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Net Metered Production allocated to Purchaser is increased (the “Electricity Surplus Quantity”) and the Local Electric Utility increases the amount of Net Metering Credits for such period, Purchaser shall, up to the Annual kWh Cap, pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, and (y) immediately notify Purchaser if it becomes aware of any event or circumstance that poses an imminent or significant risk to human health, the environment, the System or the Premises.

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating safely and at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work and System Operations, and while performing its obligations under this Agreement, Provider shall obtain and maintain and secure, and pay for the costs for, all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to the Installation Work and System Operations, and shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by a majority of photovoltaic solar system integrators in the United States.

(e) Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, or with respect to the Reserved Property or any interest therein. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(f) Performance Guarantee. If as of any anniversary of the Commercial Operation Date, the actual

output of such System (the "Actual System Output") does not equal or exceed ninety percent (90%) of the Estimated Annual Production for such period, in its next invoice Provider shall credit Purchaser an amount equal to the product of (i) the positive difference, if any, of the average applicable tariff rate per kWh that Purchaser would have been paid for Net Metered Production by its Local Electric Utility during such period minus the applicable kWh Rate specified in the Special Conditions, multiplied by (ii) the difference between the Actual System Output and ninety percent (90%) of the Estimated Annual Production for such period multiplied by the Allocated Percentage; provided, however, such liquidated damages, shall not exceed on an annual basis the product of 200% of the then-applicable kWh Rate multiplied by twenty percent (20%) of the Estimated Annual Production multiplied by the Allocated Percentage.

(g) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades, and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Purchaser be responsible for any Interconnection Obligations.

(h) Provider shall at all times comply with the terms of any and all agreements between Provider and the Local Electric Utility for the System (including but not limited to any interconnection services agreement); shall provide the Local Electric Utility such access to the Utility Meter, System and/or information relating thereto as Purchaser, in its agreement (as Host Customer) with the Local Electric Utility for the System, is bound to provide; shall obtain and maintain, for the System and the Premises, the insurance (if any) required by the Local Electric Utility and, if different, the insurance set forth in Exhibit C. Provider shall also name or cause Purchaser to be named as an additional insured on Provider's general liability insurance and any umbrella insurance policy covering the System and the Premises. Provider shall provide Purchaser with the endorsement page or other satisfactory evidence reflecting that Purchaser has been so named.

(i) Provider shall comply with the provisions of Exhibit B, which is attached hereto and incorporated herein.

(j) Onsite Load. Provider shall not have any onsite electricity usage at the Premises that will cause the System to fail to qualify for the Local Electric Utility's G-1 rate.

(k) Allocation Schedule. Provider shall, with the reasonable cooperation of Purchaser, prepare the

“Schedule Z” and any amendments thereto, pursuant to which the Net Metered Production shall be allocated to Purchaser’s accounts with the Local Electric Utility in such percentages as Purchaser shall request. Purchaser shall have no liability to Provider (and Provider shall indemnify Purchaser from all claims of the Local Electric Utility and any third party for any Losses that may arise) out of any Schedule Z, except that Provider shall not be responsible for any errors included in Purchaser’s account information furnished to Provider by Purchaser and included in the Schedule Z, provided that Provider shall promptly notify Purchaser if it becomes aware of any such errors. Purchaser shall not be required to enter into any contracts with any purchaser of any portion of the Net Metered Production in excess of the Annual kWh Cap, and Provider shall be solely responsible (i) for the sale and allocation of such excess, and (ii) for ensuring that each purchaser of such excess has been prequalified as a Net Metering Facility of a Municipality or Other Governmental Entity under 220 CMR 18, and that all information inserted by Provider on the Schedule Z with respect to each such purchaser and allocation is true, complete, and accurate.

7.2 Purchaser’s Covenants. Purchaser covenants and agrees as follows:

(a) Liens. Purchaser shall not directly create any Liens on or with respect to the System or any interest therein. This provision does not apply to judgment liens issued by a court of competent jurisdiction.

(b) Consents and Approvals. To the extent that only Purchaser is authorized to request or obtain any necessary approvals, permits, rebates or other financial incentives, Purchaser shall reasonably cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives, provided that, if it is necessary that Purchaser incur legal or consulting fees for such cooperation, Provider shall promptly pay the reasonable legal and consulting fees so incurred.

(c) Temporary Storage Space During Installation or Removal. Purchaser shall designate space, if available, at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work. Provider shall promptly restore to their original condition the portions of the Premises used for such storage and staging.

(d) Sunlight. Subject to Applicable Law, Purchaser will not install other buildings, structures or flora on the Premises or Reserved Property that will

materially over-shadow or block access of sunlight to the System.

(e) Onsite Load. Purchaser does not anticipate having any onsite electricity usage that would pass from the Local Electric Utility through the Utility Meter and shall ensure that, if it does, such onsite electricity usage shall not exceed 15 kWhrs per Billing Cycle or that would otherwise result in a reduction of the Net Metered Production beyond any reduction that would result from a usage of 15 kWhrs (or less) per Billing Cycle. For avoidance of doubt, this provision applies only to the Utility Meter, and does not apply to Purchaser’s electricity usage at the Premises at any other utility meter, and as concerns Purchaser, also does not include the System or any other onsite electricity usage placed at or behind the Utility Meter by or on behalf of Provider in connection with this Agreement or otherwise.

(f) Host Customer. Purchaser shall execute documents required by the Local Electric Utility to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the Host Customer of each Local Electric Utility meter related to the System for purposes of the Net Metering Rules. Provider shall assist Purchaser in this process, or, alternatively, establish such account in Provider’s name and transfer it to Purchaser.

(g) License. Purchaser hereby grants to Provider the license to occupy the Premises on and subject to the terms and conditions set forth in Exhibit B.

## 8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other, as of the Effective Date, that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) the Agreement constitutes its legal, valid and binding obligation enforceable against such

Party in accordance with its terms, except as may be limited by Applicable Laws; and

(e) there is no litigation, action, proceeding or investigation (of which the Party has received notice) pending before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially and adversely affect its ability to carry out the transactions contemplated herein.

## 8.2 Security Interest

(a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the “Security Interest”) in the System to a Financing Party.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Provider Obligations. Provider shall be responsible for all fees and charges of any Governmental Authority arising out of the System, its use of the Premises, and the Net Metered Production, including, without limitation, income, gross receipts, ad valorem, personal property or real property or other similar taxes, and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

## 10. FORCE MAJEURE.

10.1 Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its material obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party is unable to overcome such act or event with the exercise of best efforts and due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, “Force Majeure Event” shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party’s failure to comply with a collective bargaining agreement); (v) action or inaction by

a Governmental Authority. A Force Majeure Event shall not be based on the economic hardship of either Party, or reasonably foreseeable fluctuations in Solar Insolation, which fluctuations have already been considered in establishing the Estimated Annual Net Metered Production. Notwithstanding the foregoing, natural phenomena shall not be considered a Force Majeure Event unless such event also causes material physical damage to the System.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay undisputed amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 10 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to overcome, and minimize delay caused by, such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser and Provider shall not be excused from making any payments and paying any undisputed amounts to the other due prior to and unaffected by the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider’s performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then Purchaser shall be entitled to terminate the Agreement upon thirty (30) days’ prior written notice to Provider. If at the end of such 30-day period such Force Majeure Event shall still continue in whole or in part, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Provider’s obligation to remove said system and restore the Premises to their original condition in accordance with Exhibit B, and any such liabilities that have accrued prior to such termination); and the provisions of Section 2.2 (Early Termination) shall be inapplicable.

## 11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and

(iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) if such breach cannot be cured within thirty (30) days, Provider fails to promptly commence and pursue with diligence a cure within such thirty (30) day period, provided that such breach is cured within an additional sixty (60) days and no later.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, Purchaser may terminate the Agreement, and, at its election, either pursue such rights and remedies as are available under law and in equity, or require that Provider pay, and Provider shall, upon such termination, pay to Purchaser the reasonable net present value of an amount calculated as follows: Multiply the difference between the average monetary value of a Net Metering Credit over 180 days preceding termination of the Agreement and the kWh Rate by the Allocated Percentage for the remaining years in the term of the Agreement had the Agreement not been terminated.

(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1.

## 11.2 Purchaser Defaults and Provider's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's written notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within

such thirty (30) day period if a longer cure period is needed, provided that the total cure period shall not exceed sixty (60) days; and

(iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of written notice from Provider of such past due amount together with a copy of the invoice to which such amount relates.

(b) Provider's Remedies. If a Purchaser Default described in Section 11.2(a) has occurred and is continuing, subject to Applicable Law, Provider shall be entitled to continue to operate and maintain the System on the Premises in accordance with and subject to the provisions set forth in this Agreement, including Exhibit B, and Provider shall be entitled to recovery of any damages caused directly by the Purchaser Default, less the damages mitigated by Provider under this section and otherwise. Provider shall exercise all reasonable efforts to mitigate damages, including, where the Purchaser Default involves the non-payment of undisputed amounts by Purchaser, selling the Allocated Percentage not paid for by Purchaser to one or more third parties. Purchaser shall execute such reasonable documents as may be reasonably requested by Provider to memorialize such right. Further, if requested by Provider, Purchaser shall reasonably cooperate with Provider to establish a new metered account with the Local Electric Utility at Premises, or (as applicable) to transfer Purchaser's existing account to Provider or its designee. In the event, and only in the event, that Provider is not permitted by Applicable Law or the provisions of this Agreement to continue to operate and maintain the System on the Premises, Provider may, as its sole and exclusive remedy for a Purchaser Default, terminate this Agreement and demand payment of the Early Termination Fee, provided that no such fee shall be payable before the Commercial Operation Date, and provided further that Provider shall not exercise such remedy unless the Purchaser Default has resulted in a direct, demonstrable, and substantial economic damage to Provider.

## 12. LIMITATIONS OF LIABILITY.

12.1 Neither Party shall be liable to the other Party or its Indemnified Persons for any punitive damages arising out of, or in connection with the Agreement. For avoidance of doubt, any fines or penalties or similar charges assessed or imposed by any Governmental Authority shall not be deemed a punitive damage limited by this section. Nor shall this limitation apply to any claims of a Party for indemnification of third-party claims, but only to the extent of the damages sought by such third-party.

### 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an “Assignment”) the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (i) assign this Agreement to an Affiliate of Provider or to any other Person provided that an Affiliate of SunEdison, Inc. retains responsibility for the day-to-day operation of the System, and provided further that, by making any such assignment, Provider shall be deemed to have represented and warranted that the assignee has the qualifications and financial ability to fulfill all obligations of Provider under this Agreement; (ii) assign this Agreement to a Financing Party as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 of the Net Metering Credit Purchase and Sale Agreement, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit A of these General Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Purchaser shall not release Provider of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a Financing Party in Schedule 5 of the Net Metering Credit Purchase and Sale Agreement, or in a subsequent written notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as a collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider’s interests in this Agreement subject to the terms of this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by Purchaser without the prior written consent of Provider shall not release Purchaser of its obligations hereunder. For avoidance of doubt, Purchaser’s sale or transfer of Net Metering Credits generated by the System is not an assignment prohibited hereunder, provided that any such sale or transfer shall not relieve Purchaser of its obligations under this Agreement.

### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6 of the Net Metering Credit Purchase and Sale Agreement, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

### 15. PUBLIC ANNOUNCEMENTS.

15.1 The Parties will coordinate any public announcements to be made regarding this Agreement.

### 16. INDEMNITY.

16.1 Provider’s Indemnity. Subject to Article 12, to the fullest extent permitted by Applicable Law, Provider agrees that it shall defend, indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members,

shareholders, agents, and employees (collectively, the “Purchaser Indemnified Parties”) from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from third party claims that arise out of the actions or omissions of Provider, employees, agents, subcontractors and any person or entity for whom Provider is responsible, including the following: (a) any third party claim (including a claim of the Local Electric Utility or Governmental Authority) for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider’s negligence or willful misconduct or (b) any third party infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work or System Operations, the Solar Services and Net Metered Production, and the financing, ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due sole and directly to the gross negligence or willful misconduct of any Purchaser Indemnified Party.

Without limiting the foregoing, Provider shall defend, indemnify Purchaser from and against any and all Losses imposed upon or asserted against Purchaser, as Host Customer, by the Local Electric Utility pursuant to any agreement between Purchaser, as Host Customer with respect to the System, and the Local Electric Utility; and any Losses asserted against Purchaser by any third party (if any) purchasing electricity, Net Metering Credits and any other attributes generated by the System, in each case to the extent not caused by the negligence or willful misconduct of any Purchaser Indemnified Party.

Without limiting the foregoing, Provider shall defend, indemnify, and save harmless Purchaser from and against any and all Losses arising out of or relating in any way to third-party claims related to the System, the Premises, the Installation Work, System Operations, the Net Metered Production, and all other activities of Provider, its employees, agents, representatives, licensees, and invitees at the Premises. Provider shall not be required to so indemnify Purchaser for Losses to the extent caused solely and directly by the negligence or willful misconduct of any Purchaser Indemnified Party. For the avoidance of doubt, Provider shall have no such indemnity obligations with respect to any Losses arising from or related to Hazardous Materials existing at the Premises before the Effective Date except as provided below and in Exhibit B.

The above indemnification provisions are in addition to and not a limitation of any other rights and remedies available to Purchaser.

## 17. [NOT USED]

## 18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, including the Exhibits and Schedules attached thereto, constitutes the entire agreement and understanding between Provider and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof, and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Net Metering Credit Purchase and Sale Agreement, the provisions of the Net Metering Credit Purchase and Sale Agreement shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 Cumulative Remedies. Except as set forth to the contrary herein and except as to any payment of the Early Termination Fee, any right or remedy of Provider or Purchaser shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

### 18.5 Not Used.

18.6 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), Section 7.1 (Provider Covenants), Section 7.2 (Purchaser Covenants), Article 9 (Taxes and Governmental Fees), Article 14 (Notices), Article 16 (Indemnity), Article 18 (Miscellaneous), Provider’s obligations to remove the System and restore the Premises to their original condition as set forth in Exhibit B, and any and all other indemnification obligations in this Agreement, and all such other obligations that by their nature are intended to survive, shall survive, the expiration or termination of this Agreement for any reason.



18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Massachusetts without reference to any choice of law principles. The Parties agree that the state courts of Massachusetts shall have jurisdiction over any action or proceeding arising under the Agreement. The Parties waive any objection it may have to the laying of venue of any action or proceeding under this Agreement any courts described in this Section 18.8. Provider agrees to accept service of civil process by certified mail at the address provided herein for the delivery of notices.

18.9 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, as determined by the Parties, each acting in good faith, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Subcontracting; Prevailing Wages: In performance of the Installation Work, Provider shall pay Massachusetts prevailing wages to the extent required by Applicable Law. In addition, in the execution of the Agreement, Provider may subcontract part of the work to others. Provider shall require electrical subcontractors to be certified by the Massachusetts Division of Capital Asset Management and Maintenance (DCAMM) and have specialized training in Solar Photovoltaic design and installation. Provider shall be fully responsible to the Purchaser for the acts and omissions of its subcontractors, and of any and all persons directly or indirectly employed by the Provider and Provider's subcontractors, and any and all agents of Provider and such subcontractors as and to the same extent that Provider is responsible for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement shall create any contractual relation between any subcontractor or agent of Provider and Purchaser.

18.12 Procurement. Provider and Purchaser acknowledge their mutual understanding and assumption that this Agreement was properly procured by Power Options Inc. in accordance with the G.L. c. 164, § 137, and that the Agreement is, therefore, exempt from the provisions of any other Massachusetts procurement law otherwise applicable to such agreements (including without limitation G.L. c. 30, c. 30B, and/or c. 25A). Notwithstanding the foregoing or anything to the contrary in this Agreement, including without limitation Article 8, neither Party makes any representations or warranties of any kind with respect to compliance by Power Options with G.L. c. 164, § 137.

18.13 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

18.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.15 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.16 Liquidated Damages Not Penalty. Purchaser and Provider acknowledge that the Early Termination Fee, the Delay Liquidated Damages, and the liquidated damages set forth in Section 2.6 constitute liquidated damages, and not penalties. Purchaser and Provider further acknowledge that Provider's and Purchaser's, as the case may be, actual damages may be impractical and difficult to accurately ascertain, and that such liquidated damages constitute fair and reasonable damages to be borne by Purchaser/Provider in lieu of Provider's/Purchaser's actual damages.

18.17 Additional Terms Regarding Purchaser's Obligations. Notwithstanding anything to the contrary in this Agreement:

(a) Purchaser shall not be required to execute agreements, documents or instruments subsequent to the execution of the Agreement that will materially or unreasonably increase Purchaser's risk or obligations under the Agreement, or result in the waiver of any of Purchaser's rights or remedies under the Agreement or at law or in equity, or require Purchaser to give an opinion or make a statement of fact of which Purchaser does not have actual knowledge.

(b) Any requirement that Purchaser

cooperate with or assist Provider or take any action shall not require Purchaser to improperly interfere with or improperly influence the independent legislative, regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Purchaser.

(c) The provisions of this Agreement shall be subject to Applicable Law.

(d) Purchaser does not waive any of the rights, remedies, defenses and immunities afforded Purchaser as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Purchaser hereby reserves.

(e) Nothing in this Agreement shall interfere with the Amherst Assessor in the evaluation, calculation, assessment and collection of taxes in accordance with Applicable Laws and regulations.

19.14 Provider hereby certifies under penalties of perjury that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support; and that its bid or proposal, submitted to Power Options Inc., was submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

*[Remainder of page intentionally left blank.]*

These General Terms and Conditions are witnessed and acknowledged by SunEdison and Purchaser below. For the avoidance of doubt, neither SunEdison nor Purchaser shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

PROVIDER: SUNEDISON ORIGINATION1, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

“PURCHASER”: TOWN OF AMHERST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A****Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to the collateral assignment by Provider to a Financing Party that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party whose name and address have been provided to Purchaser in writing by Provider, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of the Provider default. No such notice will be effective absent delivery to the Financing Party, unless the Financing Party has otherwise received actual notice of such notice of default and has not been materially prejudiced by the absence of delivery of notice from Purchaser. Notwithstanding the foregoing, Purchaser shall not be required to deliver more than one notice to more than one address regardless of the number of Financing Parties for whom Purchaser has received notice.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement, and only in the event of Provider's default the Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System, subject to the terms of this Agreement.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so, provided it does so in accordance with the terms of this Agreement.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement, provided that Financing Party complies with all material obligations under the Agreement during such exercise.

(d) **Right to Cure.**

i. Purchaser will not exercise any right to terminate or suspend this Agreement on account of a Provider Default unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate this Agreement in accordance with and subject to paragraph (b), above, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the cure periods provided for in this Agreement. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party promptly commences and continuously and diligently pursues cure of such default within such period and notifies Purchaser in writing of its doing so, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional thirty (30) days.

ii. If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-paragraph (d)(i), above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and Applicable Law, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

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## EXHIBIT B

### ADDITIONAL TERMS AND CONDITIONS

For the sake of clarification, as used in this Exhibit B, the term “Agreement” is as defined in the General Terms and Conditions of the Net Metering Credit Purchase and Sale Agreement, to which this Exhibit is attached and made a part thereof.

#### 1. Premises and Related Rights.

a) Provider shall deliver the Removal Bond to Purchaser on or before the Construction Start Date.

Subject to receipt of the first Rent payment and the Removal Bond, and to the terms of the Agreement, Purchaser hereby grants to Provider a license to occupy and use the Premises to develop, design, engineer, construct, access, monitor, install, own, operate and maintain the System for the generation and distribution of electrical power (the “Permitted Use”), and for no other purpose. Purchaser hereby also grants to Provider and the applicable utility company for a period co-terminus with the Agreement, a non-exclusive license, which shall terminate upon the expiration or earlier termination of the Agreement, for access, ingress, egress, and utilities to the Premises to the extent necessary to install, interconnect, operate or gain access to the System or the Premises at locations to be agreed upon by the Parties (the “Easements”). In the event that Provider or the utility company desires to make such Easements a public record, Purchaser shall execute a commercially reasonable recordable document prepared by Provider at Provider’s cost (including payment of reasonable attorneys’ fees incurred by Purchaser in connection with the review and/or negotiations of any such document) to memorialize the Easement, which Provider may record in the registry where real estate records are customarily filed in the jurisdiction of the Premises. The Parties agree that, notwithstanding the foregoing and anything to the contrary in this Agreement (including without limitation Schedule 1 to the Net Metering Credit Purchase and Sale Agreement), the exact location of the Premises and Easements shall be as mutually agreed to by the Parties and subject to Applicable Law, and shown on a formal plan, stamped by a registered engineer, to be produced by Provider at its sole cost upon receipt of all Governmental Approvals necessary for construction of the System, but in all events before the Construction Start Date. Such plan shall be consistent with the plan included in Schedule 1 of the Net Metering Credit Purchase and Sale Agreement. The Parties agree to amend this Agreement to incorporate said plan into the Agreement as Attachment 1 to this Exhibit B.

b) Subject to Applicable Law, Governmental Approvals and the terms of the Agreement, Provider shall have the right, at Provider’s expense, to install utilities at locations reasonably approved by Purchaser and to improve the present utilities on the Premises if such installation or improvement is necessary for the Permitted Use.

c) Provider acknowledges that the Premises consist of, all or in part, a former landfill, and that Provider must obtain, on behalf of Purchaser, at Provider’s sole cost and expense, a Post-Closure Use Permit (the “DEP Permit”) from the Massachusetts Department of Environmental Protection (“DEP”), among any and all other required Governmental Approvals required to allow Provider to use the Premises for the Permitted Use. Provider agrees that the DEP Permit may impose certain conditions and requirements on Purchaser which are related to the Provider’s use of the Premises and/or the installation, construction and/or operation of the System, and which would not have been imposed on Purchaser were it not for this Agreement, and that Provider shall be solely responsible for those conditions and requirements, as well as for the monthly (or as necessary) mowing of the grass/vegetation at the landfill (i.e., within the entire Premises and four feet beyond the fence-line) to a height of no more than 6 inches, and for the control of all other vegetation and stormwater management within the Premises in order to comply and in accordance with any DEP requirements, including without limitation the DEP Permit (hereinafter collectively referred to as “Provider’s Landfill Obligations”). Provider agrees that, notwithstanding anything to the contrary in this Agreement, it (a) shall not conduct any activities on the Premises that will, or are reasonably likely to, penetrate the landfill capping material, or otherwise threaten the integrity of the landfill cap, including, without limitation, to the extent due to, excavating or materially disturbing soils at the Premises, or cause the landfill or any portion thereof to be out of compliance with any Governmental Approval or Applicable Law, including without limitation the DEP Permit; (b) shall not violate Applicable Law, including but not limited to the DEP Permit and any laws, regulations, codes, and agreements with respect to the landfill, (c) shall comply with Provider’s Landfill Obligations, at Provider’s sole cost and expense, and (d) shall not interfere with or disrupt (i) Purchaser’s activities on the portions of the property beyond the boundaries of the Premises (such property, the “Reserved Property”), or (ii) access to Purchaser’s recycling/transfer station, if any, located on or about the Premises, or (iii) with Purchaser’s landfill monitoring and maintenance, and the performance of any and all duties required of Purchaser under Applicable Law at or about the Premises and Reserved Property, including but not limited to any laws, regulations, codes, Governmental Approvals, and agreements with respect to the landfill. To the extent that the DEP Permit requires Purchaser to satisfy any of the Provider’s Landfill

Obligations, Provider shall pay Purchaser for the cost thereof in advance, failing which Purchaser may, notwithstanding anything to the contrary in this Agreement, pay for such costs using such payments as may otherwise be due Provider under this Agreement. Furthermore, Provider shall consult with Purchaser's Town Administrator or his designee and independent engineering consultant in the design and installation of the System, including notifying Purchaser of any and all meetings between Provider (or Provider's representatives or agents) with the DEP in connection with this Agreement so that Purchaser and its representatives, including its engineering consultant may, in their discretion, attend. Provider shall promptly reimburse Purchaser on a monthly basis for all reasonable costs and expenses of Purchaser's engineering consultant in connection with such consultant's services performed in connection with this Agreement, including, without limitation, the cost of such consultant to review design plans and specifications for the System and attendance at meetings with the DEP. The Parties understand and agree that any such review shall be solely for Purchaser's benefit, and such review or lack thereof shall not relieve Provider of its obligations under this Agreement, or result in any waiver of any of Purchaser's rights under this Agreement. In no event shall Provider be required to reimburse Purchaser for retained consulting services for an aggregate amount exceeding \$2,500.

2. **Rents.** Provider shall pay, in advance, annual rent payments to Purchaser for the use of Premises in the amount of \$15,000 per calendar year per MWdc, minus the annual property tax payable for the System for such calendar year (whether pursuant to a PILOT agreement or otherwise), but in no event shall annual rent be less than \$0.00 ("**Rent**"). The first Rent payment shall be made within five (5) Business Days of the Commercial Operation Date, pro rated to cover the period commencing on the Commercial Operation Date through the end of such calendar year. Thereafter, the Rent shall be paid, in advance, no later than January 10 of each calendar year.

All payments becoming due under this Agreement and not paid when due shall bear interest at the Stated Rate from the applicable due date until received by Purchaser.

3. **Removal of System at Expiration; System Survey.** Upon the expiration or earlier termination of the Agreement, Provider shall, at its sole cost, remove the System and restore the Premises to their original condition and in accordance with all Applicable Law no later than 90 days following the expiration or earlier termination of this Agreement. In the event Provider fails to complete the removal of the System and restoration of the Premises by said date, Purchaser shall have the right (but not the obligation), at its option and in its sole discretion, to cause the removal of the System and complete restoration of the Premises under this Section by drawing on Provider's Removal Bond. In such event, if the actual cost of removal exceeds the amount of the Removal Bond, Provider shall forthwith pay the difference to Purchaser. Furthermore, within sixty (60) days after the Commercial Operation Date, Provider, at its sole expense, shall commission a survey of the System by an independent, certified professional engineer to confirm that the System has been constructed on the Premises in accordance with the terms of this Agreement. Provider shall furnish a copy of the System survey to Purchaser promptly upon its completion.

4. **Construction Progress Reports; Utilities.** During design and construction of the System, Provider shall keep Purchaser informed on a weekly basis regarding the progress, scheduling and coordination of the work, and shall conduct weekly progress meetings with representatives of Purchaser. Provider shall be responsible for obtaining and paying for any electric current and water and other utilities to the Premises after the Effective Date; separate meters for such utilities shall be installed and maintained at Provider's sole cost and expense, and Provider shall be responsible for all utility and other related expenses.

5. **Access to Premises.**

a) Commencing on the Effective Date and throughout the term of this Agreement, Provider shall have the exclusive right to enter upon the Premises to perform, subject to the terms of this Agreement, and excluding subsurface or destructive testing, all effort and labor reasonably necessary to carry out tests, inspections, surveys and investigations reasonably necessary for construction of the System ("**Tests**") subject to advance approval of Purchaser's Mayor or his designee, which shall not be unreasonably withheld, conditioned or delayed, provided that Provider shall indemnify, hold harmless and defend Purchaser from and against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of the Tests, and provided further that Provider shall promptly restore the areas of the Tests to their original condition; and to design, engineer, construct, install, inspect, test, operate, upgrade, repair and maintain the System on the Premises. Provider shall take all reasonable precautions against any damage to the Premises, the Reserved Property, and all contiguous and adjacent property and structures.

b) Purchaser and its agents shall at all times have access to and the right to observe the installation of the System from a location on the Premises, subject to compliance with Provider's reasonable site-safety rules and Applicable Law.

c) Provider shall at all times exercise reasonable care and conduct itself in accordance with Applicable Law and in a professional manner when at the Premises or the Reserved Property, and shall observe the reasonable requests of Purchaser, including, but not limited to, concerning the entering and exiting of the Premises, and the storage of equipment and materials at the Premises. Provider shall not obstruct access to the Premises or the Reserved Property. In addition and subject to the right of observation of the installation work provided in the immediately preceding Section and the right of access provided to the Purchaser under this Agreement, Purchaser and its agents shall from time to time, upon five (5) Business Days' notice, have access to inspect the Premises during the term of this Agreement, and shall also be provided access to the books, records, and compilations of data, which pertain to the performance of obligations, provisions and requirements of this Agreement, which records shall be accurately kept, including on a generally recognized accounting basis, and all calculations shall be kept on file in legible form; provided that Purchaser and its agents shall comply with Provider's reasonable site-safety rules during any visit to the Premises, provided further that in the event of an emergency, Purchaser or its agents may enter the Premises without the need to provide a five-Business-Day notice, but Purchaser shall in such event provide notice to Provider as soon as practicable. Notwithstanding the foregoing or anything to the contrary in this Agreement, to the extent the Local Electric Utility requires access to the System, Meter or Premises pursuant to its agreement with the Purchaser as Host Customer for the System or pursuant to the Local Electric Utility's interconnection or other applicable tariff, Provider shall promptly provide such access to the extent required by the Local Electric Utility under said agreement/tariff, and shall fully cooperate with Purchaser and the Local Electric Utility in connection therewith.

6. **Representations, Warranties and Covenants.**

a) **Statutory Filings.** Upon execution of this Agreement, Provider must complete, execute and file the Disclosure Statement required by G.L. c. 7C, § 38.

b) **Condition of Premises.** Notwithstanding anything to the contrary in this Agreement, Provider accepts the Premises "as is" and with any and all defects, and without benefit of any services, facilities, improvements or modifications to be made by Purchaser, and without any representation or warranty of any kind by Purchaser, and without any recourse against Purchaser as to the title to and the nature, condition or usability of the Premises, and as to the use(s) to which the Reserved Property and Premises or any part thereof have been put, including, without limitation, the activities set forth in Section 1(c) of this Exhibit B, and any uses described in this Agreement. Provider accepts and assumes all risk of settlement, movement, subsidence or shifting of the Premises resulting from the decomposition (or the byproducts of such decomposition) or naturally occurring settlement of soil, material, liquid and/or gases beneath the landfill cap, and for any damages or other loss to Provider, its Affiliates or Financing Parties resulting therefrom, including, but not limited to, physical damage to the System or loss of System productivity. For avoidance of doubt, nothing in this provision alters the clarification of the extent of Provider's indemnification obligations as such is set forth in the last sentence of Section 7, below.

7. **Hazardous Materials.** Provider shall not introduce, use, exacerbate, or cause to be introduced, used or exacerbated, any Hazardous Materials on, in or under the Premises or Reserved Property. If Provider becomes aware of any such Hazardous Materials, it shall promptly notify the Purchaser of the type and location of such Hazardous Materials in writing. Provider agrees to indemnify, defend and hold harmless Purchaser from and against any and all claims, damages, costs, expenses, assessments, penalties, fines, Losses, judgments and reasonable attorney fees that Purchaser may suffer or incur due to Provider's failure to comply with this Section. This obligation specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Governmental Authority, and is in addition to, and not a limitation of, any other rights and remedies available to Purchaser, and shall survive the expiration or earlier termination of this Agreement. For clarity, Provider shall have no obligation to indemnify or hold harmless Purchaser with respect to any Hazardous Materials that were not introduced, used, or exacerbated, or caused to be introduced, used, or exacerbated, on, in or under the Premises or Reserved Property by Provider, and where Provider is obligated to indemnify and hold harmless Purchaser under this provision, it is required to do so only to the extent that the Losses in question arise from the introduction, use or exacerbation of Hazardous Materials by (or caused by) Provider.

8. **Access to System; Emergencies; No Waste of Premises.** Provider shall, in coordination with Purchaser's Fire Chief and Board of Health, and subject to the provisions of this Agreement, including without limitation Section 1(c) of this Exhibit, use reasonable and lawful means of restricting third-party access to the System and Premises, including without



limitation, the construction of a fence. Keys to any locks shall be provided to the Board of Health and Fire Chief, which, together with its agents and consultants and representatives of the DEP, shall have unrestricted "24/7" access to the Premises for health-and-safety and landfill-related purposes (including, but not limited to, landfill monitoring) notwithstanding anything to the contrary in this Agreement.

In addition to its other obligations under the Agreement, Provider shall, at its sole cost and expense, keep the Premises in clean, good and safe order and condition, including, but not limited to, by making any necessary repairs to Provider's fence at the Premises, and by removing all Provider's trash and waste, and any and all snow and ice, from the Premises, and Provider shall not commit, or permit its agents, employees, representatives or invitees to commit any waste to the Premises. If Provider damages the Premises or Reserved Property, or any other property of Purchaser, or property of any other lessee at the Reserved Property, Provider shall promptly repair and restore the damaged areas or property at its sole cost and expense with or without any notice of such damage from Purchaser or any such lessee. In the event Provider fails to perform such repair or restoration promptly, Purchaser shall have right (but not the obligation), following thirty (30) days' notice to Provider, to cause such repairs or restorations to be made without any responsibility or liability to Provider or any other party for any damages to Provider's or such other party's property occurring as a result thereof, and Provider shall forthwith upon demand pay over to Purchaser all of the costs and expenses, including attorneys' fees, incurred by Purchaser in connection therewith, failing which Purchaser may withhold the value of the same from amounts otherwise due Provider under the Agreement. If and to the extent required by Applicable Law, including the DEP Permit and any other Governmental Approval of the DEP, Provider shall maintain a vegetative cover over the Premises. Purchaser shall have no obligation to maintain or repair the Premises or the System, or any security measures implemented by Provider in connection therewith, notwithstanding anything to the contrary in this Agreement.

Provider understands and agrees that, notwithstanding anything to the contrary in this Agreement, Purchaser shall not be responsible for the subsidence of all or any part of the landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying or beneath the cap, including, but not limited to, as may result from the decay of waste buried beneath the cap, or for the effects of such subsidence on the System. Purchaser understands and agrees that, notwithstanding anything to the contrary in this Agreement, Provider shall not be responsible for the subsidence of all or any part of the landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying or beneath the cap, including, but not limited to, as may result from the decay of waste buried beneath the cap, provided that nothing in this sentence relieves Provider of responsibility for any subsidence caused by Provider.

9. **Temporary Removal of System.** In the event that the landfill cap requires repair or replacement during the term of the Agreement through no fault of Provider, the Provider shall, remove portions of the System as necessary for the repair or replacement work to be performed, and Purchaser shall be responsible for the reasonable direct costs and expenses incurred by Provider in doing so. Purchaser shall provide Provider with at least ninety (90) days advance written notice of any such repair or replacement work, except in the event of an emergency or order of any court or Governmental Authority, in which event Purchaser shall provide notice as soon as practicable. During the period of such removal, those portions of the System that are removed from their original location may be temporarily stored off-site, or the Purchaser may designate a location for the temporary storage on other property of Purchaser, if available. If such storage is off-site, such storage shall be at Purchaser's sole (reasonable) cost and expense and shall conform with industry and manufacturer's requirements for the proper storage of any such equipment. During such temporary storage, the Provider shall, at Purchaser's sole (reasonable) expense, be responsible for the security of the System. Provider shall store the removed System or portions thereof in a manner that prevents the public from gaining access to the removed System or portions thereof and that prevents damage to such property. To the extent that damage to the landfill cap or other areas of the Premises is the result of the acts or omissions of a Party, the other Party shall be entitled to pursue all rights and remedies available to it, including, but not limited to, all administrative penalties or fines imposed on it, and all costs incurred in the restoration of the cap in compliance with the requirements of the DEP and any other Governmental Authority.

Provider's rent shall be reduced proportionally for the area of the Premises and days from and during which any portion of the System has been removed under this Section 9 until such portion of the System is fully restored and operational, provided that, in reinstalling the System and portions thereof Provider does so expeditiously and with all reasonable diligence. Purchaser shall be responsible for payment of Provider's reasonable lost revenue, including in connection with and reasonable lost revenue from the sale of Environmental Attributes during any period of a removal under this Section 9 that was not due to the fault of Provider, its employees, agents, representatives, licensees, or invitees if, and only if, and then only to the extent that, such periods of removal, in the aggregate over the Term, exceeds thirty (30) days, provided that (i) any such amounts may be paid in the form of a credit on Rents otherwise due and payable by Provider, provided that the full amount due shall be paid by Purchaser over no more than 18 months, (ii) the Term shall (subject to Applicable Law) be extended until such amounts have been so paid, and (iii) such period of removal shall be deemed to be a disruption due to

Purchaser pursuant to Section 7.1(f).. For avoidance of doubt, if, for example, any such removal over the Term is 35 days in the aggregate, Purchaser shall be responsible for payment of Provider's lost profits and lost Environmental Attributes for five days only.

10. **Subordination to Existing Leases, Easements and Rights of Way.** Provider acknowledges and understands that this Agreement and all rights of Provider hereunder are subject and subordinate to all easements, rights of way, declarations, restrictions and other matters of record as of the Effective Date. Purchaser reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, subject to Provider's right of quiet enjoyment under this Agreement, provided, however, that Purchaser may do all such things as may be required by Applicable Law and any Governmental Approval and Governmental Authority, including without limitation the DEP, notwithstanding anything to the contrary in this Agreement.

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**Attachment 1 to Exhibit B**

*[To be inserted prior to Construction Start Date, in form mutually agreed by the Parties]*

## **EXHIBIT C**

### **PROVIDER INSURANCE REQUIREMENTS**

Throughout the Term, Provider shall maintain, and upon execution of this Agreement and from time to time thereafter upon request of Purchaser furnish evidence that it maintains, the following insurance:

**i. Commercial general liability insurance** in limit not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applied per job) and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.

**ii. Minimum additional \$5,000,000 umbrella** for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.

**iii. Professional liability insurance** covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.

**iv. Commercial automobile liability** with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.

**v. Worker's Compensation** coverage as required by Chapter 152 of the Massachusetts General Laws with Employer's Liability limits of \$500,000 each accident, \$500,000 disease - each employee and \$500,000 disease policy limit.

# NET METERING CREDIT PURCHASE AND SALE AGREEMENT

[New Landfill]

This Net Metering Credit Purchase and Sale Agreement is made and entered into as of November \_\_, 2015 (the “Effective Date”), between SunEdison Origination1, LLC, a Delaware limited liability company (“Provider”), and Town of Amherst, a Massachusetts municipal corporation (“Purchaser”; and, together with Provider, each, a “Party” and together, the “Parties”).

## WITNESSETH:

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises described on Schedule 1;

WHEREAS, the Parties intend that, pursuant to the Net Metering Rules, the System will qualify as a Net Metering Facility and will generate Net Metering Credits under said rules, and that if the System constitutes a Class III Net Metering Facility under 220 CMR 18, that is must also qualify as a Net Metering Facility of a Municipality or Other Governmental Entity;

WHEREAS, Purchaser is willing to purchase, or pay to be allocated, the Allocated Percentage (as set forth in Schedule 2 hereof) of the Net Metered Production to be generated by the System (subject to the Annual kWh Cap as set forth in Schedule 2 herein); and

WHEREAS, Provider and Purchaser acknowledge those certain General Terms and Conditions of Net Metering Credit Purchase and Sale Agreement dated as of the Effective Date (“General Conditions”), which are incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. INCORPORATION OF GENERAL CONDITIONS. The General Conditions are incorporated herein and attached hereto as if set forth in their entirety.
2. Schedules. The following Schedules hereto are the respective Schedules to the Net Metering Credit Purchase and Sale Agreement referenced in this Net Metering Credit Purchase and Sale Agreement and the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate, Allocated Percentage; Annual kWh Cap, and Tracking Trigger
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Net Metered Production
Schedule 5	Notice Information
Schedule 6	Time of Payment
Schedule 7	Term

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

**SUNEDISON ORIGINATION1,  
LLC**

By: SUN EDISON LLC

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**TOWN OF AMHERST**

By: \_\_\_\_\_  
Name:  
Title:  
Date

## **SCHEDULES**

### **I. Schedule 1: Description of Premises and System**

<b>Solar System Premises:</b>	Town-Owned Landfill located at 740 Belchertown Road, Amherst, MA 01002. See preliminary site plan attached to this Schedule 1.
<b>Premises is Owned or Controlled by:</b>	Purchaser
<b>Purchaser is to be the Host Customer with respect to the Premises:</b>	Yes
<b>Solar System Size:</b>	Approximately 3,700 kW (DC) (representing an initial estimate, which may vary by agreement of the Parties, depending on the final design of the System).
<b>Scope Summary:</b>	Design, finance, install, operate, maintain, repair and, upon expiration or termination of Agreement, remove grid-interconnected, ground mounted solar electric (PV) system.
<b>Module:</b>	SunEdison R350BYC or similar
<b>Inverter:</b>	IEEE 1547 qualified
<b>Performance Guarantee</b>	Ninety percent (90%) of Estimated Annual Net Metered Production
<b>Guaranteed Construction Start Date</b>	October 1, 2016, or, if later, the date that is sixty (60) days prior to the date that the Local Electric Utility has indicated that it will have completed all necessary interconnection upgrades and related work necessary for the System to be placed in service; <u>provided</u> , however, in no event shall the Guaranteed Construction Start Date be later than April 1, 2017.
<b>Guaranteed Commercial Operation Date</b>	180 days from the Construction Start Date, which shall be extended on a day-for-day basis only in the event of delays due to unusually severe weather events that prevents material or critical elements of onsite work from being performed. Provider shall give written notice to Purchaser of the occurrence of any such weather events and concomitant delay within two business of the commencement of any such events, including the anticipated duration of any resulting delay, reasonably demonstrating how such weather events caused such delay.

Attachment to Schedule 1: Preliminary Site Plan

*[Execution version will include pdf of the preliminary site plan]*



## **II. Schedule 2 - kWh Rate, Allocated Percentage, Annual kWh Cap, and Tracking Trigger**

### **1. kWh Rate:**

(A) Unless the situation described in clause (B) below occurs, the kWh Rate shall be \$0.0925/kWh, which rate shall remain the same throughout the Term.

(B) In the event that, despite Provider's compliance with the terms of this Agreement and through no fault of its own, the Project is placed in service after December 31, 2016 due solely to delays by the LDC and, as a consequence thereof, is not eligible for the 30% Investment Tax Credit ("ITC") pursuant to Section 48 of the Internal Revenue Code, then the kWh Rate shall be increased by \$0.002875/kWh for each 5 percentage point change in the ITC up to a maximum total increase of \$0.0115/kWh. (By way of example, if the Project is placed in service in 2017, and, as a consequence, is eligible for a 10% ITC, and Purchaser does not exercise its right, granted hereunder, to terminate the Agreement, the kWh Rate would be increased by  $4 \times \$0.002875 = \$0.0115$ , such that the kWh Rate would be \$0.104/kWh.) Notwithstanding the foregoing, (i) Provider shall be entitled to any such adjustment in the kWh Rate only if Provider filed its interconnection application for the System no later than 30 days after the Effective Date and has complied with all terms of this Agreement, and (ii) nothing herein shall be deemed to modify or waive any rights Purchaser may otherwise have terminate this Agreement pursuant to Section 2.1 of the General Conditions.

2. Allocated Percentage: 100 percent

3. Annual kWh Cap: 4,700,000

4. Tracking Trigger: \$0.110/kWh

**III. Schedule 3 – Early Termination Fee Under Section 2.2 and 11.2 of the General Conditions**

<b>Early Termination Occurs in Operating Year:</b>	<b>Early Termination Fee (where Purchaser does <u>not</u> take Title to the System) (\$/Wdc including costs of removal)</b>	<b>Baseline Purchase Price (\$/Wdc)</b>
1*	\$ 5.05	--
2	\$ 4.11	--
3	\$ 3.74	--
4	\$ 3.31	--
5	\$ 2.85	--
6	\$ 2.38	--
7	\$ 2.23	--
8	\$ 2.13	--
9	\$ 2.03	--
10	\$ 1.91	\$1.41
11	\$ 1.78	--
12	\$ 1.69	--
13	\$ 1.60	--
14	\$ 1.51	--
15	\$ 1.42	\$0.92
16	\$ 1.32	--
17	\$ 1.23	--
18	\$ 1.14	--
19	\$1.06	--
20	\$ 0.98	\$0.48

\*Purchaser will not be responsible for Early Termination Fee prior to the “In Service Date” as such term is defined in the Local Electric Utility’s interconnection tariff.

**IV. Schedule 4 – Estimated Annual Net Metered Production**

Estimated Annual Net Metered Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

<b>Operating Year of System Term</b>	<b>Estimated Net Metered Production (kWh)</b>	<b>Operating Year of System Term</b>	<b>Estimated Net Metered Production (kWh)</b>
1	4,113,995	11	3,912,862
2	4,093,425	12	3,893,298
3	4,072,957	13	3,873,831
4	4,052,593	14	3,854,462
5	4,032,330	15	3,835,190
6	4,012,168	16	3,816,014
7	3,992,107	17	3,796,934
8	3,972,147	18	3,777,949
9	3,952,286	19	3,759,059
10	3,932,525	20	3,740,264

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs of Net Metered Production are expected to be generated annually by the System and may be updated to reflect the final System design by the Parties, provided that nothing in this sentence relieves Provider of its obligations under the Agreement for the Performance Guarantee. The values reflect an annual degradation rate of 0.5% per year.

**V. Schedule 5 – Notice Information**

**Purchaser:**

Town of Amherst  
4 Boltwood Ave.  
Amherst, MA 01002  
413-259-3333

ATTN:

Town Administrator and Select Board

**Provider:**

SunEdison Origination1, LLC  
c/o Sun Edison LLC  
12500 Baltimore Avenue  
Beltsville, MD 20705  
1-888-786-3347

*With a copy to*

General Counsel  
12500 Baltimore Avenue  
Beltsville, MD 20705-6375  
Tel. (443) 909-7200  
Fax (443) 909-7121

**Financing Party:**

[To be provided by Provider when known]

**VI. Schedule 6 – Time of Payment**

Purchaser shall pay all undisputed amounts due hereunder within forty-five (45) days after its receipt of the applicable Invoice Date.

**VII. Schedule 7 –Term**

The Term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date, unless and until terminated earlier pursuant to the provisions of the Agreement.